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Attorneys for Plaintiff, DANE ZEEN

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

DANE ZEEN

Plaintiff,  
v.

COUNTY OF SONOMA, STEVE FREITAS,  
MICHAEL YODER, CHARLES BLOUNT,  
and DOES 1-20, inclusive.

Defendants.

Case No: 3:17-cv-02056-LB

**PLAINTIFF'S SEPARATE  
MEMORANDUM ON DISPUTED JURY  
INSTRUCTIONS**

Date: August 2, 2018  
Time: 1:00 p.m.  
Courtroom: C, 15<sup>th</sup> Floor  
Judge: The Honorable Laurel Beeler

Trial: August 20, 2018

Plaintiff Dane Zeen presented two special jury instructions. They track the model Ninth Circuit Jury instructions for use of force and damages.

Plaintiff does not object to the defendants' General Instructions except as to 3.4 and 3.5. These instructions are premature and may be confusing to the jury.

As to the modifications to Ninth Circuit Model instructions defendants propose, plaintiff has several objections.

1.2 – Claim and Defenses: Plaintiff objects to language “outside of that related to her (sic) lawful detention by Defendant Michael Yoder”. This is a misstatement of plaintiff’s claim. Plaintiff alleges that he was subjected to excessive force while being taken into custody for a psychiatric evaluation.

5.1, 5.2 – Damages: Plaintiff offered a competing proposed instruction number 2, which is more consistent with the evidence.

5.3 – Damages – Mitigation: Plaintiff objects to this instruction unless evidence is admitted at trial to support this instruction. Plaintiff is unaware of any such evidence.

5.5 – Punitive Damages. The test is preponderance, not clear and convincing. Plaintiff objects to any other revisions from the Model instruction.

9.22/25 – Fourth Amendment, Excessive Force: Plaintiff objects to many of the additions and modifications defendants made. In addition, plaintiff objects to the omission of many factors (1 through 12) set forth in Model Instruction 9.25. Plaintiff offered a competing proposed instruction number 1, which is more consistent with the Model instruction.

As to defendants' special instructions, plaintiff objects as follows.

Special Instruction 1: Plaintiff objects to this instruction because this language is not included in Model Instruction 9.25.

Special Instructions 2 and 3: This is not a criminal case and Dane Zeen was not arrested for committing a crime. In addition, this language is not included in Model Instruction 9.25.

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1 Dated: July 12, 2018

Respectfully submitted,

2 **SCOTT LAW FIRM**

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5 By: /s/John Houston Scott

John Houston Scott

6 Attorneys for Plaintiff

7 Dated: July 12, 2018

**LAW OFFICES OF IZAAK D. SCHWAIGER**

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9 By: /s/Izaak D. Schwaiger

10 Izaak D. Schwaiger

11 Attorneys for Plaintiff